IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.384 OF 2004

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OFFICE NOTES, OFFICE MEMORANDUM OF CORAM, APPEARANCES, COURT'S ORDERS OR DIRECTIONS AND REGISTRAR'S ORDERS	COURT'S OR JUDGES ORDERS

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Shri R.N. Jawal for the Appellants.
Shri S.M. Railkar for the Respondents.

CORAM : A. S. OKA, J.
DATE : JULY 27, 2006.

P.C.:

1. Heard the learned Counsel appearing for the Appellants. The Appellants are the original Defendants. The Trial Court passed a decree for perpetual injunction in favour of the Respondents-Plaintiffs. The decree for perpetual injunction has been confirmed in Appeal.

2. The learned Counsel appearing for the Appellants submitted that the case of the Appellants was that their possession was protected under section 53A of the Transfer of Property Act, 1882 on the basis of agreement for sale executed by the father of the Respondents. He submitted that the agreement for sale was duly proved in evidence and therefore, the courts below

have committed an error in passing decree in favour of the Respondents.

3. I have considered the submissions. The Appellate Court has recorded a finding that existence of said agreement was not specifically pleaded in the written statement filed by the Appellants. The agreement on which reliance was sought to be placed by the Appellants was produced by the Appellants before the Trial Court. The agreement was, however, not exhibited and it was marked as article "A". The courts below have held that the agreement in question was not duly proved. If this is the position, the Appellants cannot rely upon section 53A of the said Act of 1882. Apart from this fact, the Appellate Court has relied upon entries in the revenue records regarding possession.

4. No substantial question of law arises. Second Appeal is dismissed. No orders as to cost.

JUDGE